

Internal Revenue Service

memorandum

TL-N-2332-90
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TL-N-2350-90
CC:TL:Br3 Mustone Hall
I.R.C. section 401
Plan qualification

date: JAN 30 1990

to: District Counsel, Manhattan NA:MAN
Att'n: Paul S. Schneiderman

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: Technical Advice - [REDACTED] (GL-1311-88)

It has been requested that we provide technical assistance with respect to the pre-issuance review of proposed favorable determination letters involving three small retirement plans which the above taxpayer has terminated. At issue are three Applications for Determination Upon Termination (Forms 5310) filed by [REDACTED] for these plans.

ISSUE

Whether the District's determination to issue favorable determination letters in response to the subject applications should be approved by District Counsel.

CONCLUSION

We have determined that there appears to be no basis for disapproving the proposed determination letters.

FACTS

On [REDACTED], [REDACTED] submitted to the EP/EO Division, Cincinnati Key District, Forms 5310 for three retirement plans which it was in the process of terminating: (1) [REDACTED]; (2) [REDACTED]; and (3) [REDACTED].

[REDACTED]. The applications for determination were subsequently brought to the attention of the district counsel attorney responsible for handling the [REDACTED] bankruptcy. He requested that the key district process the applications, but not issue any final determination letters until instructed by district counsel to do so. As we understand it, this freeze was not requested because of any specific concern as to the continuing qualification of the subject plans; instead, it was requested in order to avoid any unforeseen conflict with Service

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position in the bankruptcy proceedings. As it turns out, however, no qualification issues respecting these or any of [REDACTED]'s other retirement plans are at stake in those proceedings.

As directed, the district processed the applications, determining that favorable determination letters should be issued for all three plans. The proposed favorable letters and accompanying applications were subsequently submitted to district counsel in Manhattan for review and approval.

DISCUSSION

In order to ensure that no qualification problems went undetected by the district, we requested that the Employee Plans Technical and Actuarial Division informally review the applications and accompanying documentation. They have reviewed those materials and concur in the district's determination. We see no basis for disagreeing with this assessment. Nor do we believe that there is any reason to further delay issuance of determination letters since the bankruptcy proceedings do not involve any issues which relate to the qualification of these plans upon termination.

If you need any further assistance in this matter, please contact David Mustone of this Division at (FTS) 566-3407.

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